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Implementation of recommendations on the six mandated areas of the Permanent Forum and on the Millennium Development Goals

Information received from the United Nations system and other intergovernmental organizations

Secretariat of the Convention on Biological Diversity and World Intellectual Property Organization**

Summary

The present report comprises two reports: one by the secretariat of the Convention on Biological Diversity and one by World Intellectual Property Organization (WIPO).

The report by the secretariat of the Convention on Biological Diversity focuses on actions taken on the recommendations addressed to the Convention on Biological Diversity arising from the sixth session of the Permanent Forum on Indigenous Issues and considered by the Working Group on Article 8(j) at its fifth meeting (15-19 October 2007), and to be considered by the Conference of the Parties at its ninth meeting (19-30 May 2008), as well as follow-up concerning recommendations arising from previous sessions.

The World Intellectual Property Organization (WIPO) report draws attention to:

(a) Draft instruments for the protection against misappropriation and misuse of traditional cultural expressions/expressions of folklore and traditional knowledge being discussed by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore;

* E/C.19/2008/1.

** Submission of the present report was delayed in order to ensure the inclusion of the most recent information.

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(b) The WIPO Voluntary Fund for Accredited Indigenous and Local Communities;

(c) WIPO consultations and studies on the relationship between customary law and intellectual property; and,

(d) Several practical capacity-building initiatives being undertaken by WIPO, as requested by, inter alia, the Permanent Forum, such as the development of tools to guard against the illegitimate patenting of traditional knowledge, and the elaboration of guidelines for communities on developing protocols on managing intellectual property issues when documenting, recording and digitizing intangible cultural heritage. This latter initiative includes an ongoing partnership between WIPO, the International Labour Organization and the Maasai Cultural Heritage Foundation relating to the protection, promotion and preservation of Maasai cultural heritage.

Contents

		Paragraphs	Page
I.	Secretariat on the Convention on Biological Diversity	1–32	4
	A. Response to recommendations addressed exclusively to the Convention on Biological Diversity by the Permanent Forum on Indigenous Issues	1–21	4
	B. Response to general themes and special emphasis of the Permanent Forum on Indigenous Issues	22	8
	C. Obstacles to the implementation of recommendations of the Permanent Forum on Indigenous Issues	23–24	8
	D. Facilitating factors for the implementation of recommendations of the Permanent Forum on Indigenous Issues	25	9
	E. Policy or similar tool on indigenous people's issues?	26	9
	F. Other significant information	27	9
	G. Capacity-building programme/s, including for staff	28	10
	H. Information regarding activities on the goal, objectives and programme of action of the Second Decade of the World's Indigenous People	29–30	10
	I. Information and suggestions regarding the special theme of the seventh session of the Permanent Forum on Indigenous Issues: Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges	31	10
	J. List of conferences and other meetings regarding indigenous issues in 2007-2008	32	10
II.	World Intellectual Property Organization	33–51	11
	A. Draft instruments on the protection of traditional cultural expressions and traditional knowledge against misappropriation and misuse	33–42	11
	B. Participation of indigenous peoples and local communities; WIPO Voluntary Fund	43–44	13
	C. Consultations and studies on customary laws and intellectual property	45–46	15
	D. Access to genetic resources and benefit-sharing	47	15
	E. Practical initiatives and capacity-building	48–49	16
	F. Contribution of expertise and experience by the Forum	50	16
	G. Cooperation with other organizations and agencies	51	17

I. Secretariat on the Convention on Biological Diversity

A. Response to recommendations addressed exclusively to the Convention on Biological Diversity by the Permanent Forum on Indigenous Issues[1]

Paragraph 75 of the report of the Forum on its third session

1. The secretariat recently developed a draft Convention on Biological Diversity Gender Plan of Action with the full and effective participation of indigenous women. It has been drafted on the basis of an analysis of the current performance of the Convention in the area of gender and biodiversity; a survey conducted among the Convention staff; and a workshop with staff from divisions within the Convention secretariat and with the participation of resource persons from United Nations Environment Programme (UNEP), Women in Environment and Development Organization, The Global Environment Facility Small Grants Programme, the United Nation Development Programme (UNDP) and representatives of indigenous women's networks and organizations. This workshop was held 16-18 January 2008 in Geneva.

2. It is also based on a review of the implementation of plans of action of similar institutions and international partners, including UNEP, the Food and Agriculture Organization of the United Nations (FAO), the International Labour Organization (ILO), the United Nations Development Fund for Women, UNDP, the World Conservation Union, the Norwegian Agency for Development Cooperation, the Swedish International Development Cooperation Agency and the Swiss Agency for Development and Cooperation.

3. This Plan of Action defines the role that the Convention on Biological Diversity secretariat will play in stimulating and facilitating efforts, both in-house and with partners at the national, regional and global levels, to overcome constraints and take advantage of opportunities to promote gender equality. The Plan is the continuing response of the secretariat and the Convention to global commitments of the last decades as well as to recommendations from international forums, and it is in compliance with major mandates within the United Nations system. It is also a reflection of the increasing awareness that gender equality and the empowerment of women are important prerequisites for environmental conservation and sustainable development. The final Convention on Biological Diversity Gender Plan of Action will be submitted to the ninth session of the Conference of the Parties as an information document in Bonn, in May 2008.

4. Finally, the secretariat continues to cooperate with the secretariat of the Permanent Forum on Indigenous Issues, among other relevant organizations, and with women representatives of indigenous and local communities, to ensure that the perspectives and strategies of indigenous women in biodiversity-related issues are taken into account within the work being done under the Convention with regard to traditional knowledge, and that capacity-building efforts target indigenous women. As a case in point, the secretariat has recently entered into a memorandum of understanding with la Fundación para la Promoción del Conocimiento Indígena to

[1] E/2004/43.

provide capacity-building for indigenous women in April 2008 to assist their preparations for the ninth meeting of the Conference of the Parties to be held in Bonn, May 2008.

Paragraph 77 of the report of the Forum on its third session

5. The development of sui generis systems for the protection of traditional knowledge was again considered at the fifth meeting of the Working Group on Article 8(j), in October 2007. The draft decision emerging from the Working Group invites Parties and Governments to consider that the development, adoption or recognition of effective sui generis systems be local, national or regional in nature, taking into consideration the relevant customary laws of the indigenous and local communities concerned, and recognized or created with the full and effective participation of those communities, in order to protect, respect, preserve, maintain and promote their knowledge, innovations and practices, while ensuring fair and equitable benefit-sharing.

6. Furthermore, in the draft decision emerging from the fifth meeting of the Working Group which will be considered at the ninth meeting of the Conference of the Parties in May 2008, the Executive Secretary has been requested to update his note (UNEP/CBDF/WG8J/5/6) to take into account submissions, including concise case studies by Parties, Governments, indigenous and local community organizations and to make the updated note available for consideration at the sixth meeting of the Working Group.

7. Noting the ongoing work of the Special Rapporteur (Michael Dodson) appointed by the Permanent Forum at its fifth session, on sui generis systems, customary law and the protection of traditional knowledge, the secretariat continues to be in touch with the Special Rapporteur to ensure that our efforts are mutually supportive.

Draft decision III contained in the report of the Forum on its sixth session

8. In response to the theme of the seventh session, the secretariat of the Convention has contributed to, and collated an Inter-Agency Support Group on Indigenous Peoples' Issues paper on climate change and indigenous peoples for the consideration at the seventh session of the Permanent Forum.

Paragraph 13 of the report of the Forum on its sixth session

9. The secretariat continues to collaborate with members of the Permanent Forum on an informal level to share information and decisions relevant for their research into issues of mutual interest such as monocropping and biofuels.

Paragraph 31 of the report of the Forum on its sixth session

10. Advice and recommendations from the Permanent Forum have been considered by the Working Group on Article 8(j) at its fifth meeting under agenda item 6, on an international regime on access and benefit-sharing. However, the fifth meeting of the Working Group on Article 8(j) was unable to reach consensus on this issue and hence no views were referred to the sixth meeting of the Working Group on Access and Benefit-Sharing on this occasion. It should be noted that the report of the Permanent Forum international expert group meeting, held 17 to 19 January

2007, on the Convention on Biological Diversity's international regime on access and benefit-sharing and indigenous peoples' human rights, as well as other relevant documents, including recommendations of the Permanent Forum, were made available for the full consideration of both Working Groups (see UNEP/CBD/WG8J/5/INF.10 and 12).

Paragraphs 49, 50 and 132 of the report of the Forum on its sixth session

11. The secretariat of the Convention worked in partnership with the International Indigenous Forum on Biodiversity to present a side event during the fifth meeting of the Working Group on Article 8(j) drawing attention to the international expert meetings facilitated by the Permanent Forum (January 2007) and another relevant expert meeting facilitated by the secretariat of the Convention (September 2007), both of which considered indigenous peoples' issues relevant to the negotiation and elaboration of an international regime on Access and Benefit-Sharing. Furthermore, the reports of both meetings were made available as information documents to both the fifth meetings of the Working Group on Access and Benefit-Sharing and the Working Group on Article 8(j) for the consideration of Parties and participants.

Paragraph 51 of the report of the Forum on its sixth session

12. This recommendation has been addressed in paragraph 5 of this report, which provides an update on the issue of sui generis systems.

Paragraph 59 of the report of the Forum on its sixth session

13. The Executive Secretary has expressed his full commitment to a close partnership with both the Permanent Forum and indigenous and local communities in our mutual goals of promoting the International Year of Biodiversity and the special role of indigenous peoples as custodians of biological diversity. The secretariat has commenced fund-raising with donors to ensure the availability of resources and adequate time to prepare fully for the International Year.

Paragraphs 119, 120 and 121 of the report of the Forum on its sixth session

14. The fifth meeting of the Working Group on Article 8(j) considered the various regional reports on indicators and report of the international expert seminar on indicators relevant for indigenous peoples organized by the International Indigenous Forum on Biodiversity in Banaue on 5-9 March 2007 (see UNEP/CBD/WG8J/5/8). It welcomed the work carried out under the auspices of the ad hoc Open-ended Working Group on Article 8(j) and Related Provisions, and in particular the regional and international expert workshops organized by the Working Group on indicators of the International Indigenous Forum on Biodiversity. This meeting's aim was to identify a limited number of meaningful, practical and measurable indicators on the status of traditional knowledge, innovations and practices, to assess progress towards achieving the Convention's strategic plan and the 2010 biodiversity target.

15. Furthermore, the Working Group recommended that a maximum of two additional indicators on the status of traditional knowledge, innovations and practices be selected for inclusion in the framework by the Ad Hoc Working Group on Article 8(j) and Related Provisions at its sixth meeting. Further to this, Parties, Governments and relevant organizations, were invited, in consultation with indigenous and local communities, to submit to the Executive Secretary information

on experiences and lessons learned in designing and, as appropriate, testing, national indicators for status and trends of traditional knowledge, innovations and practices, in order to assess progress towards the 2010 biodiversity target, as well as to assess progress in the implementation of the strategic plan. Parties were also invited, in consultation with indigenous and local communities, to report thereon in the fourth national reports, and the Executive Secretary was asked to compile and assess data availability of the information received, and to transmit the compilation and analysis to the sixth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, as basis for further work.

Paragraph 130 of the report of the Forum on its sixth session

16. Thanks to a generous donation by the Governments of Finland and Spain, the secretariat of the Convention is organizing a series of expert meetings concerning climate change and indigenous and local communities. The first expert meeting, entitled International Expert Meeting on Responses to Climate Change for Indigenous and Local Communities and the impact on their Traditional Knowledge related to Biological Diversity, will be held in partnership with the Government of Finland in Helsinki 25-28 March 2008. This will be followed by a series of workshops aimed at small island developing States and shall include indigenous and local community participants. The secretariat has also committed to participate in the international expert meeting entitled Indigenous Peoples and Climate Change to be held in Darwin from 2-4 April 2008, which is being organized by the United Nations University-Institute of Advanced Studies, secretariat of the United Nations Permanent Forum on Indigenous Issues and the North Australian Indigenous Land and Sea Management Alliance.

Paragraph 131 of the report of the Forum on its sixth session

17. In response to this recommendation and requests by indigenous and local community representatives, and thanks to a generous donation by the Government of Spain, the secretariat facilitated an international expert meeting entitled the International Indigenous and Local Community Consultation on Access and Benefit-Sharing and the Development of an International Regime. The report was provided as an information document (see UNEP/CBD/WG-ABS/5/INF/9 and UNEP/CBD/WG8J/5/INF/13) to both the fifth meetings of the Working Group on Access and Benefit-Sharing and the Working Group on Article 8(j). The meeting and the report received high praise from both indigenous peoples and the participants in general, and was welcomed by the co-chairs of the Working Group on Access and Benefit-Sharing as a useful contribution to the ongoing work.

Paragraph 133 of the report of the Forum on its sixth session

18. In Decision VIII/5 C, the Parties reaffirmed Decision VII/19 D and adopted an enhanced participatory mechanism for indigenous and local communities, including the establishment of the Voluntary Funding Mechanism to support participation, as well as the provision of administrative support. Parties were invited to include indigenous and local community representatives in official delegations and invite donors to facilitate the participation of indigenous and local communities in preparatory processes for both the Working Group on Access and Benefit-Sharing and the Working Group on Article 8(j) (see http://www.cbd.int/decisions/).

19. Furthermore, to ensure the participation of indigenous and local communities through the Voluntary Funding Mechanism, the fifth meeting of the Working Group on Article 8(j) in draft decision 5/4, requested the secretariat to intensify efforts to promote the General Trust Fund for Voluntary Contributions to Facilitate the Participation of Indigenous and Local Communities in the Work of the Convention on Biological Diversity.

Paragraph 135 of the report of the Forum on its sixth session

20. The secretariat continues to maintain contact with donors and other agencies to provide opportunities for capacity-building for indigenous and local communities on matters of relevance to them under the Convention and, in particular, the elaboration and negotiation of an international regime on access and benefit-sharing. As mentioned previously, the secretariat has recently entered into a memorandum of understanding with la Fundación para la Promoción del Conocimiento Indígena to provide capacity-building for indigenous women in April 2008 to assist with their preparations for the ninth meeting of the Conference of the Parties to be held in Bonn, May 2008.

Paragraph 145 of the report of the Forum on its sixth session

21. The secretariat continues to collaborate informally with Permanent Forum member and Special Rapporteur Michael Dodson, as well as other relevant international organizations (such as WIPO) to ensure that our common work on sui generis systems, customary law and the protection of traditional knowledge are mutually supportive. The Report of the Special Rapporteur was made available as an information document (UNEP/CBD/WG8J/5/INF.12) for the fifth meeting of the Working Group on Article 8(j) to inform agenda item 8 entitled: Development of elements of sui generis systems for the protection of traditional knowledge, innovations and practices.

B. Response to general themes and special emphasis of the Permanent Forum on Indigenous Issues

22. Noting that under general themes and special emphasis the Permanent Forum on Indigenous Issues has included the issue of free, prior and informed consent, the secretariat wishes to report that in Article 8(j) of the Convention, Parties are requested to promote traditional knowledge, innovations and practices relevant to conservation and sustainable use with the approval and involvement of the holders of such knowledge, innovations and practices. This has been on some occasions interpreted by some Parties and in various Conference of the parties decisions as prior and informed consent, however, at this stage in the implementation of the Convention, there is no consensus on this issue.

C. Obstacles to the implementation of recommendations of the Permanent Forum on Indigenous Issues

23. Within the context of the Convention on Biological Diversity, the implementation of the programme of work for Article 8(j) and related provisions is the highest priority for indigenous and local communities. In assessing obstacles to

implementation, it is important to note that the secretariat itself is not an implementing body and that implementation rests with the Parties to the Convention. Nevertheless, the secretariat has firmly entered an implementation stage in our efforts to assist parties in their implementation of the Convention in our mutual efforts to achieve the 2010 Biodiversity Target.

24. Given this, the recommendations of the Permanent Forum must first be considered by the Working Group on Article 8(j) or another relevant body and then forwarded to the Conference of the Parties for their final decision. There are 190 Parties to the Convention, making it an almost universal environmental convention, and Parties are required to make decisions by consensus. The biennial work programme of the secretariat is hence based on the consensus decisions emerging from each Conference of the Parties. Hence, the work cycle of the Convention, which occupies a two-year time frame, can make it difficult to report on an annual basis to the Permanent Forum with any real sense of momentum.

D. Facilitating factors for the implementation of recommendations of the Permanent Forum on Indigenous Issues

25. There exists tremendous good will on behalf of the Parties to the Convention who have ensured that indigenous and local communities enjoy a high profile and enhanced participatory mechanisms in bodies under the Convention that are of importance to them. A number of donor Governments have ensured that the programme of work is well supported and able to carry out its biennial work programme with the full and effective participation of indigenous and local communities.

E. Policy or similar tool on indigenous people's issues?

26. As a treaty implementation body, the Parties to the Convention set policy through consensus decisions. The Parties have repeatedly emphasized in various decisions that the work of the Convention should be carried out with the full and effective participation of indigenous and local communities, and this remains the underlying principle of the Convention's engagement with indigenous and local communities.

F. Other significant information

27. The secretariat is in regular contact with donors to support the implementation of the work programme for Article 8(j), as decided by the Conference of the Parties at its biennial meetings. In particular, the voluntary fund for the participation of indigenous and local communities in meetings held under the Convention is now fully operational, and information about the fund, including application forms, can be found on the Convention on Biological Diversity website.[2]

[2] http://www.cbd.int/traditional/fund.shtml.

G. Capacity-building programme/s, including for staff

28. The secretariat carries out regular capacity-building for indigenous and local communities with a particular focus on indigenous and local community women. The secretariat also conducts regular staff training and capacity-building of staff based on needs analysis, and provides updates on matters of mutual interest, such as the effective participation of indigenous and local communities in the Convention processes, through regular staff meetings.

H. Information regarding activities on the goal, objectives and programme of action of the Second Decade of the World's Indigenous People

29. All activities within the framework of the Convention on Biological Diversity related to indigenous and local communities directly contribute to the implementation of the objectives of the Second Decade of the World's Indigenous People. In particular, Article 8(j) and related provisions directly address matters of the utmost importance to indigenous and local communities by focusing on respect, preservation and maintenance of the knowledge, innovations and practices of indigenous and local communities, embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. Article 8(j) also requires that this knowledge and these innovations and practices are promoted with the approval and involvement of the knowledge holders and encourage the equitable sharing of benefits arising from their use.

30. In brief, the Convention on Biological Diversity has considerably advanced its preliminary work of the promotion and protection of traditional knowledge. In distilling its work into outcomes, the Convention has entered a period of enhanced implementation and actively seeks and encourages the involvement of indigenous and local communities in development and implementation of the work programme of Article 8(j) and related provisions, which contribute directly to the goals of the Second International Decade of the World's Indigenous People.

I. Information and suggestions regarding the special theme of the seventh session of the Permanent Forum on Indigenous Issues: Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges

31. The secretariat has collated and contributed to an Inter-agency support group on indigenous peoples' issues paper on climate change and indigenous peoples, which has been submitted to the Permanent Forum for its consideration at its seventh session.

J. List of conferences and other meetings regarding indigenous issues in 2007-2008

32. A list of meetings for 2007-2008 is updated regularly on the Convention on Biological Diversity website (www.cbd.int/meetings/default.shtml).

II. World Intellectual Property Organization

A. Draft instruments on the protection of traditional cultural expressions and traditional knowledge against misappropriation and misuse

33. The protection of traditional knowledge and traditional cultural expressions against misappropriation and misuse is the subject of active policy development, norm-building and capacity-building programmes at WIPO. Policy development and norm-building take place mainly within the WIPO Intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore.

34. WIPO member States have called for accelerated progress in this area, stressed the international dimension of these questions and emphasized that no outcome of WIPO's work in this area is excluded, including the possible development of an international instrument or instruments. They have also underscored that WIPO's work should not prejudice developments in other forums.

35. More recent sessions of the Intergovernmental committee have examined draft principles and objectives[3] that could shape sui generis instruments on traditional knowledge and traditional cultural expressions. This approach to protection could recognize, among other things, collective interests in traditional knowledge and expressions of traditional cultures which are characteristic of a distinct cultural identity. These interests would be respected for as long as a traditional community continues to be associated with the knowledge or cultural expressions.

36. These drafts include compliance with the free, prior and informed consent principle and the recognition of customary laws and practices. In line with the views of many indigenous and traditional communities, the draft provisions do not require the assertion of new exclusive property rights over traditional knowledge or traditional cultural expressions, but accommodate this option, should communities wish to take it up. Similarly, prior registration or documentation of traditional knowledge and traditional cultural expressions is not a precondition for protection.

37. The drafts have not been adopted or endorsed by the Intergovernmental committee and may be developed further. They draw upon a wide range of community, national and regional experiences, and have been developed over several years by and in consultation with member States, indigenous peoples and other traditional and cultural communities, civil society organizations and a range of other interested parties. Successive drafts of the objectives and principles were the subject of open commentary processes established by the Intergovernmental committee. The drafts directly incorporate drafting proposals made by many participants in the commentary processes, including indigenous communities. The secretariat of the Permanent Forum has also contributed valuable comments as part of these commentary processes. Details of the background to these documents, and

[3] Current drafts are published as WIPO Documents WIPO/GRTKF/IC/12/4(c) (TCEs) and WIPO/GRTKF/IC/12/5(c) (TK), both dated 6 December 2007. These are available at http://www.wipo.int/meetings/en/details.jsp?meeting_id=14802. Documents containing comments on those drafts are reviewed in documents WIPO/GRTKF/IC/12/4(a) and WIPO/GRTKF/IC/12/5(a), available on the same page.

the wide range of materials and perspectives that shaped them, can be found on the WIPO website http://www.wipo.int/tk/en/index.html.

38. These draft materials are being used as points of reference in a range of national, regional and international policy discussions and standard-setting processes. Their scope and content could be seen as an important contribution to implementation of Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted on 13 September 2007. Several processes in other policy areas are drawing directly from the draft WIPO provisions.

39. While the draft objectives and principles have no formal status, they illustrate some of the perspectives and approaches that are guiding work in this area, and could suggest possible frameworks for the protection of traditional cultural expressions and traditional knowledge against misappropriation and misuse.

40. There are two distinct sets of draft objectives and principles, the first dealing with traditional cultural expressions ("expressions of folklore") and the second with traditional knowledge as such. This responds to the choice made in many cases to address distinctly the specific policy and legal questions raised by these two areas. The draft materials are prepared, though, on the understanding that for many communities these are closely related, even integral, aspects of respect for and protection of their cultural and intellectual heritage. The two sets of draft objectives and principles are therefore complementary. Some jurisdictions protect both traditional cultural expressions and traditional knowledge in a single instrument, while others use a range of laws and instruments to address the two areas, or specific aspects of them, separately.

41. The objectives and principles contained in the draft instruments were discussed further by the Intergovernmental committee at its eleventh session, which took place 3-12 July 2007. At this session, certain key policy issues were also discussed, as decided by the Intergovernmental committee at its tenth session in November 2006, and Intergovernmental committee participants had submitted written comments on these issues before the session. These issues go to the core of what an international policy process must consider when creating new international norms for the protection of traditional knowledge and traditional cultural expressions against misuse and misappropriation. Full details of the decisions taken by the Intergovernmental committee at its eleventh session, and the issues mentioned, are available from the WIPO secretariat and on the WIPO website http://www.wipo.int/tk/en/. The next Intergovernmental committee meeting will take place 25-29 February 2008, based on a renewed mandate adopted by the WIPO General Assembly at its 2007 session (see WIPO document WO/GA/34/16, para. 293 available on http://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_34/wo_ga_34_16.doc).

42. All working documents, comments, papers, studies, databases, questionnaires, and other materials prepared for consideration by the Intergovernmental committee, as well as comprehensive reports of its sessions, are publicly available in English, French and Spanish (see http://www.wipo.int/meetings/en/topic.jsp?groupid=11). Certain publications are also available in Arabic, Chinese and Russian.

B. Participation of indigenous peoples and local communities; WIPO Voluntary Fund

43. The member States of WIPO have repeatedly stressed the priority attached to enhancing the participation of the Forum and indigenous representatives in Intergovernmental committee sessions. In active dialogue and cooperation with those community representatives, WIPO member States and the WIPO secretariat continue to explore how to enhance the participation of indigenous peoples in WIPO's work on these issues. The practical experience and guidance of the Permanent Forum and its members are invaluable inputs to achieving this goal. Member States of WIPO have expressed their unanimous support for directly involving as much as possible representatives of indigenous and local communities in the work of the Intergovernmental committee (see WIPO/GRTKF/IC/4/15, para. 60).

44. In this regard, a number of practical steps have already been undertaken, including:

(i) A fast-track accreditation procedure for all non-governmental and intergovernmental organizations has been in place since the first session of the Intergovernmental committee in April 2001. More than 150 organizations have received accreditation, the majority representing indigenous peoples. No applicant has been denied accreditation (http://www.wipo.int/tk/en/igc/index.html#accreditation);

(ii) The WIPO General Assembly has extended a formal invitation to the Permanent Forum to take part in sessions of the Intergovernmental committee and many participants have welcomed the active participation of the Permanent Forum;

(iii) A number of member States have adopted the practice of funding the participation of representatives of indigenous and local communities in Intergovernmental committee sessions;

(iv) The funds provided by WIPO to support member State participation from developing countries have been used in some cases by such countries to support the participation of leaders of their indigenous or local communities;

(v) Consultations and workshops at the national and regional level and other forums aimed at developing focused input for the Intergovernmental committee have included representatives of the Permanent Forum and indigenous and local communities as speakers and participants;

(vi) The WIPO website provides for written contributions by accredited NGOs on the issues before the Intergovernmental committee (http://www.wipo.int/tk/en/ngoparticipation);

(vii) Specific briefings and consultations for NGO representatives, particularly representatives of indigenous and local communities, are undertaken within the framework of meetings of the Intergovernmental committee;

(viii) The WIPO secretariat has continued its practice of consulting with interested representatives of indigenous and local communities on draft documents and other material being developed for the Intergovernmental committee, as well as related capacity-building and awareness documents, including a series of case studies and a distance learning course contributed to by indigenous experts. During

the open commentary processes described above, Intergovernmental committee draft materials, especially the draft provisions, directly incorporate textual proposals and extensive comments made by indigenous and local communities taking part in the process;

(ix) The WIPO General Assembly has established the WIPO Voluntary Fund for Accredited indigenous and local communities. This new Fund facilitates the participation in sessions of the Intergovernmental committee of representatives of indigenous and local communities, and other customary holders or custodians of traditional knowledge and traditional cultural expressions, which are already accredited to the Intergovernmental committee. Details of the Fund, its operations and the application procedure are fully set out on the WIPO website (http://www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html). This WIPO Fund has so far received voluntary contributions from the Swedish International Biodiversity Programme, the Christensen Fund and the Governments of Switzerland, South Africa and Norway. These generous donations enabled the Fund to finance the participation of 16 representatives of indigenous and local communities and other customary holders or custodians of traditional knowledge and traditional cultural expressions, in the tenth and eleventh sessions of the Intergovernmental committee which took place in November 2006 and July 2007. The WIPO Voluntary Fund will also fund the participation of a further nine such representatives in the twelfth session of the Intergovernmental committee taking place 25-29 February 2008. Full reports detailing the operation and management of this Fund, including recent information on the funds received, applications for funding received and decisions taken in this regard by the Advisory Board elected relative to the Rules of the Fund, are available in WIPO documents WIPO/GRTKF/IC/11/3 and WIPO/GRTKF/IC/11/INF/4 and INF/7 (http://www.wipo.int/meetings/en/details.jsp?meeting_id=12522). The extent of support that this Voluntary Fund can provide depends on the resources donated to it. Any potential donors are encouraged to contact the WIPO secretariat for further information. WIPO warmly welcomes the statement made by the Permanent Forum at its fifth session that the Permanent Forum "notes with appreciation the establishment of a Voluntary Fund by WIPO to enable the participation of indigenous representatives in the work of the WIPO Intergovernmental committee on traditional knowledge and traditional cultural expressions, and encourages donors to contribute to the Trust Fund (E/2006/43, para. 171)";

(x) The Intergovernmental committee decided in November 2004 that future sessions of the Committee should be preceded by panel presentations chaired by a representative of an indigenous or local community. Such panels, with the theme Indigenous and Local Communities' Concerns and Experiences in Promoting, Sustaining and Safeguarding their Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources, were held at the commencement of the eighth, ninth, tenth and eleventh sessions of the Intergovernmental committee (June 2005, April 2006, November 2006 and July 2007 respectively). The panels comprise seven participants from indigenous and local communities in the geo-cultural regions recognized by the Forum and their participation is funded by WIPO.

C. Consultations and studies on customary laws and intellectual property

45. WIPO has initiated a process of study and consultation on two related questions:

(i) The role of the customary laws and protocols of indigenous and local communities in relation to their traditional knowledge, genetic resources and traditional cultural expressions; and

(ii) The relationship of customary laws and protocols to the intellectual property system.

This work builds on an extensive past background of consultation and reflection on the role of customary laws and protocols, both within the Intergovernmental committee and in WIPO's broader dialogue with indigenous communities (such as the fact-finding consultations in the late 1990s that set directions for WIPO's work in this area). As noted above, the draft provisions for the protection of traditional knowledge and traditional cultural expressions already take account of the role of customary law, and the study process would complement these developments. The full background is described in an issues paper (see below) which has been developed to facilitate further consultations on this question. To supplement existing studies, WIPO is commissioning studies from recognized indigenous legal experts on these issues; the first such study, concentrating on indigenous customary laws in several Latin American countries, is now available in English and Spanish (see http://www.wipo.int/tk/en/consultations/customary_law/index.html).

46. Several mechanisms have been put in place to encourage and facilitate participation in this work by indigenous peoples and local communities. Interested parties are invited to submit papers, including commentaries, case studies and analyses dealing with the relationship between customary law and protocols and

(i) The protection of traditional cultural expressions and traditional knowledge against misuse and misappropriation; or

(ii) Intellectual property law in general and the administration and development of the intellectual property system.

These papers may respond to a draft background and issues paper that has been prepared but this is not compulsory. A set of suggested guidelines has been prepared to stimulate papers. The Permanent Forum's participation in this work and contributions to it are most welcome and discussions have been held with the Permanent Forum in this connection. For more information, see WIPO website (http://www.wipo.int/tk/en/consultations/customary_law/index.html).

D. Access to genetic resources and benefit-sharing

47. With respect to genetic resources, the work of WIPO does not concern the protection of genetic resources as such. Genetic resources (such as microbes or plants) are physical resources, not intellectual properties, even though they are often integrally associated with traditional knowledge. WIPO does, however, deal with intellectual property issues related to genetic resources (such as a biotech invention derived from a genetic resource). Any work on intellectual property matters relating

to genetic resources must proceed within the understanding that there is a well-established international legal framework already regulating genetic resources issues, in the form of the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture of the Food and Agricultural Organization. Because of the close association of genetic resources with some traditional knowledge, some national biodiversity laws protect both genetic resources and traditional knowledge. A "disclosure of origin" requirement in patent applications is regarded by many States and others as an instrument to ensure the traceability of genetic resources and associated traditional knowledge, and to support compliance with free prior and informed consent and fair and equitable benefit-sharing, in furtherance, inter alia, of the objectives of the Convention on Biological Diversity. Another perspective calls for alternative approaches to strengthening the link between equitable benefit-sharing and the intellectual property system. Discussions on these issues continue in WIPO and in other forums, with a revised paper scheduled to be reviewed at the next session of the Intergovernmental committee. WIPO cooperates closely with the secretariat of the Convention on Biological Diversity in relation to these questions, and has prepared technical studies at the request of the Convention on Biological Diversity.

E. Practical initiatives and capacity-building

48. The programme of activities in this area includes a range of complementary practical activities, such as capacity-building, legislative assistance, awareness-raising and training, and cooperation with a broad spectrum of national, regional and international initiatives. For instance, cooperation continues with indigenous women in Panama on the use of intellectual property tools to protect, preserve and promote their creative arts.

49. Particular attention is being paid to the development of intellectual property tools to prevent the illegitimate patenting of traditional knowledge, and the elaboration of intellectual property guidelines and associated information technology services relating to the recording, digitization and dissemination of intangible cultural heritage for the economic and cultural benefit of indigenous peoples and local communities. This latter line of work, undertaken within the WIPO Creative Heritage Project, includes, for example, an ongoing partnership between WIPO, the ILO and the Maasai Cultural Heritage Foundation of Laikipia, Kenya for the enhanced protection, preservation and promotion of Maasai cultural heritage. A joint WIPO-ILO mission was undertaken to the Maasai community in October 2006 and the two organizations and the community continue to work closely together to develop and implement this partnership.

F. Contribution of expertise and experience by the Forum

50. The Permanent Forum is represented at sessions of the Intergovernmental committee and has been represented at other national and regional events organized by WIPO. In 2002, the WIPO General Assembly, by a consensus decision, extended a specific invitation to the Permanent Forum to take part in Intergovernmental committee sessions. The Permanent Forum has played a prominent role in Intergovernmental committee discussions on the enhancement of indigenous participation in the Intergovernmental committee, and contributed in particular to

the development of the proposal for a WIPO Voluntary Fund for indigenous and local communities, which has now been established. The Permanent Forum has taken part in two WIPO regional conferences on the protection of traditional knowledge and traditional cultural expressions.

G. Cooperation with other organizations and agencies

51. As requested by WIPO's member States and as recommended by the Permanent Forum, WIPO continues to cooperate with other organizations and agencies on issues of concern to the Forum, and to ensure that its work on the recognition and protection of traditional cultural expressions and traditional knowledge is complementary to and supportive of their work. These include: the secretariat of the Convention on Biological Diversity, the Food and Agricultural Organization, the International Labour Organization, the International Trade Centre, the United Nations Educational, Scientific and Cultural Organization, the United Nations Environment Programme, the United Nations Conference on Trade and Development, the Office of the High Commissioner for Human Rights, the World Health Organization, the United Nations Development Programme and the United Nations Industrial Development Organization. WIPO has also coordinated with the World Bank and the World Trade Organization and with a range of regional bodies and NGOs.

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Permanent Forum on Indigenous Issues
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Item 5 of the provisional agenda*
Human rights: dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs

Information received from the United Nations system and other intergovernmental organizations

Office of the United Nations High Commissioner for Human Rights**

Summary

The present report of the Office of the United Nations High Commissioner for Human Rights is a response to the recommendations of the United Nations Permanent Forum on Indigenous Issues at its sixth session. Attention is also drawn to two important developments related to the rights of indigenous peoples that occurred since the last session of the Permanent Forum, namely, the adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples and the establishment by the Human Rights Council of an expert mechanism on the rights of indigenous peoples to provide thematic expertise. The report also provides information regarding the promotion and realization of the Declaration and implementation of the objectives of the second International Decade of the World's Indigenous People.

* E/C.19/2008/1.
** The submission of the present report was delayed in order to ensure the inclusion of the most recent information.

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Contents

		Paragraphs	Page
I.	Introduction	1	3
II.	Follow-up to the recommendations of the Permanent Forum on Indigenous Issues addressed to the Human Rights Council	2–10	3
III.	Follow-up to the recommendations addressed to specific special procedures mandate holders	11–16	4
IV.	Recommendations addressed to the Office of the United Nations High Commissioner for Human Rights	17–22	6
V.	Other relevant activities of the Office of the United Nations High Commissioner for Human Rights	23–31	8
Annex			
	Expert meeting on indigenous peoples and the implementation of the second International Decade of the World's Indigenous People		10

I. Introduction

1. In its report on its sixth session (E/2007/43), the Permanent Forum on Indigenous Issues made recommendations to the United Nations system, including to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and human rights mechanisms. The present report provides information, as requested by the Permanent Forum, on recommendations addressed to the Office as well as other information of relevance.

II. Follow-up to the recommendations of the Permanent Forum on Indigenous Issues addressed to the Human Rights Council

2. The Permanent Forum made a series of recommendations to the Human Rights Council, including to maintain the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people,[1] and to maintain and strengthen the Council's expertise on indigenous peoples' human rights issues.[2]

Extension of the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

3. At its sixth session, the Human Rights Council renewed the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. The mandate was expanded to include, in particular, the promotion of the United Nations Declaration on the Rights of Indigenous Peoples and other international instruments relevant to the advancement of the rights of indigenous peoples. Human Rights Council resolution 6/12 renewing the mandate of the Special Rapporteur can be found on the website of OHCHR.

Establishment of an expert mechanism on the rights of indigenous peoples

4. In its resolution 6/16, the Human Rights Council requested OHCHR to convene an informal meeting in Geneva, for a day and a half, open to the participation of States, indigenous peoples and other stakeholders, to exchange views on the most appropriate mechanisms to continue the work of the Working Group on Indigenous Populations. The meeting took place on 5 December and on the morning of 6 December 2007.

5. At its resumed sixth session, the Human Rights Council adopted its resolution 6/36 establishing a subsidiary expert mechanism to provide the Council with thematic expertise on the rights of indigenous peoples. The mechanism is mandated to focus its thematic expertise mainly on studies and research-based advice, and to suggest proposals to the Council for its consideration and approval.

6. The mechanism will consist of five independent experts and will meet annually three days in its first year and thereafter for up to five days. The Council

[1] E/2007/43, para. 86.

[2] Ibid., para. 87 (e).

recommended that due regard be given to experts of indigenous origin during the selection process.

7. The Council also decided that the mechanism shall be open to the participation, as observers, of States, United Nations mechanisms, bodies and specialized agencies, funds and programmes, intergovernmental organizations, regional organizations and mechanisms in the field of human rights, national human rights institutions and other relevant national bodies, academics and experts on indigenous issues, and non-governmental organizations in consultative status with the Economic and Social Council. The meeting shall also be open to indigenous peoples' organizations and non-governmental organizations, whose aims and purposes are in conformity with the spirit, purposes and principles of the Charter of the United Nations, based on arrangements, including Economic and Social Council resolution 1996/31, and practices observed by the Commission on Human Rights, through an open and transparent accreditation procedure in accordance with the rules of procedure of the Human Rights Council, which will provide for the timely information on participation and consultation with States concerned.

8. The resolution includes a standing invitation to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and a member of the Permanent Forum to contribute to the meeting. The expert mechanism is expected to meet for three days in October 2008.

Inclusion of indigenous rights and expertise in the work of the Human Rights Council

9. Regarding the recommendation to include indigenous peoples' rights in the work of the Human Rights Council, it may be noted that the agenda items of the Council are broad and allow for relevant information on indigenous peoples' issues to be provided and absorbed. The rights of indigenous peoples can specifically be addressed under the sub-item of item 3 of the Council agenda, entitled "Rights of peoples, and specific groups and individuals".

10. The Human Rights Council is also undertaking a review of the human rights situation of all Member States under the so-called universal periodic review process. Information provided by relevant stakeholders, including non-governmental and indigenous organizations, may be submitted for consideration in the preparation of those reports. Further information on the procedures for submitting information may be found on the OHCHR website.

III. Follow-up to the recommendations addressed to specific special procedures mandate holders

11. The recommendations addressed to the special procedures mandate holders were forwarded to individual mandate holders for their consideration. They included recommendations calling upon the Special Rapporteurs of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism and on the human rights of migrants to pay particular attention to the situation of indigenous peoples,[3] the recommendation to the Special

[3] Ibid., paras. 89 and 117.

Rapporteurs on trafficking in persons, especially women and children, and on violence against women, its causes and consequences, to hold regional consultations with indigenous women of Asia[4] and the recommendations to the Special Rapporteurs on counter-terrorism and on the situation of human rights and fundamental freedoms of indigenous people to conduct thematic studies.[5]

Counter-terrorism and indigenous peoples

12. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism included a whole section on the impact of counter-terrorism measures on the economic, social and cultural rights of indigenous peoples in his annual report to the Human Rights Council.[6] The Special Rapporteur analysed a number of specific cases in the context of his correspondence with Governments. He noted with concern that in various parts of the world Governments have invoked their counter-terrorism laws in response to claims and social movements emanating from the indigenous peoples of those countries and that such measures may wrongly stigmatize as terrorism the activities of indigenous communities in respect of conflicts over land rights and natural resources. In his concluding recommendations, the Special Rapporteur urged States not to apply their counter-terrorism laws and measures to social movements or protest by indigenous peoples or minority communities who claim recognition and full protection for their economic, social and cultural rights, including the right to enjoy their own distinctive culture, which is often associated with lands and specific forms of livelihood.[7] The Special Rapporteur is expected to address the issue in his forthcoming country visits.

Urban and migrant indigenous peoples

13. The Special Rapporteur on the human rights of migrants notes the recommendation of the Permanent Forum to pay special attention to the vulnerability of urban and migrant indigenous peoples and would welcome receiving information from different sources, in particular from indigenous organizations, regarding the situation of cross-border indigenous migrants. In his future activities, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people will consider the possibility of undertaking a study on the rights of urban indigenous peoples and migration, paying particular attention to their ability to exercise and enjoy their economic and social rights.

Violence against women, trafficking and indigenous peoples

14. The Special Rapporteur on violence against women, its causes and consequences, took note of the recommendation of the Permanent Forum to hold a regional consultation with indigenous women in Asia and will make arrangements to implement it in the context of the next Asia-Pacific regional consultation on violence against women, generally organized in cooperation with the Asia Pacific Forum on Women, Law and Development. The United Nations Development Fund

[4] Ibid., para. 105.
[5] Ibid., paras. 76 and 111.
[6] A/HRC/6/17, paras. 57-63.
[7] Ibid., para. 73 (d).

for Women has been contacted in that regard. The Special Rapporteur on trafficking in persons, especially women and children, has unfortunately been unable to include the consultation in her annual programme of activities, but the recommendation will be taken into consideration in future activities.

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

15. The Special Rapporteur welcomes the recommendation of the Permanent Forum calling upon States to invite the Special Rapporteur to undertake country visits. In that regard, he refers to resolution 6/12 renewing his mandate, whereby the Council encourages all Governments to give serious consideration to the possibility of inviting the Special Rapporteur to visit their countries so as to enable him/her to fulfil the mandate effectively. He has noted that he will continue to take into account the concerns expressed by indigenous peoples in the identification of potential country visits.

16. Regarding the recommendation of the Permanent Forum encouraging analysis by States, the specialized agencies, academics, indigenous peoples and their organizations of the implementation of free, prior and informed consent principles and mechanisms regarding projects on indigenous lands and territories,[8] the Special Rapporteur would like to draw the attention of the Forum to the annual report he submitted to the Human Rights Council that includes a section on human rights principles in indigenous development, which underlines the importance of those principles.[9]

IV. Recommendations addressed to the Office of the United Nations High Commissioner for Human Rights

17. Recommendations were made to continue to disseminate information and to conduct capacity-building activities regarding the United Nations human rights mechanisms,[10] to prepare guidelines on the protection of indigenous peoples in voluntary isolation and initial contact[11] and to report on the results of the High Commissioner's study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments.[12]

Capacity-building regarding human rights mechanisms

18. The Office continues to strengthen the capacity-building of indigenous representatives regarding human rights mechanisms through its fellowship programme. In 2007, a total of 19 participants (11 women and 8 men) participated in the programme. They were from 15 different countries, including Cameroon, Ukraine, Finland, Bangladesh, the Philippines, Mexico, Chile, Panama, Ecuador, Chad, Morocco, Algeria, the Congo and the Russian Federation. Some parts of the

[8] E/2007/43, para. 19.
[9] A/HRC/6/15, sect. III.
[10] E/2007/43, para. 75.
[11] Ibid., para. 40.
[12] Ibid., para. 55.

programme have been reinforced, in particular the Russian-speaking programme, with a training session of an additional two weeks duration organized by the OHCHR presence in Moscow in cooperation with the United Nations country team.

19. In addition, some of the trained fellows undertook paid internships or consultancies both at the office and at the International Labour Office in Geneva, as well as in United Nations field or regional offices in the Philippines, Mexico, Chile, Panama and Cameroon. Those short-term assignments further empowered trained fellows by enabling them to put into practice the knowledge gained during the fellowship programme and to participate directly in the activities of United Nations organizations and specialized agencies in their respective countries, thus also contributing to improving the understanding of indigenous issues of those agencies. In addition to the information that can be found on the OHCHR website, a leaflet available in the four languages of the programme, namely English, Russian, Spanish and French, has been prepared to promote greater dissemination and awareness about the content of the programme.

Isolated indigenous peoples

20. In November 2006, OHCHR, in cooperation with the Government of Bolivia, the Confederación de Pueblos Indígenas de Bolivia and the International Work Group on Indigenous Affairs, organized an expert seminar on indigenous peoples in voluntary isolation and initial contact of the Amazon and Chaco region of South America. One of the recommendations of the meeting was that guidelines should be prepared that could provide guidance and best practices to policymakers, officials, non-governmental organizations and other relevant actors. Draft guidelines have been prepared and are presently under review by the Governments of the region and other partners.

21. The Office has also organized, jointly with the International Committee for the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact in the Amazon and Chaco regions and with the support of the Spanish Agency for International Cooperation and the Danish International Development Agency, a workshop on the right to health of indigenous peoples in voluntary isolation and initial contact, which was held in Quito, on 21 and 22 October 2007. The conclusions are available on the OHCHR website.

Access to water and indigenous peoples

22. Pursuant to Human Rights Council decision 2/104 on human rights and access to water, the High Commissioner submitted a report in September 2007 to the Human Rights Council at its sixth session on the human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, taking into account the views of States and other stakeholders.[13] The drafting of the study was informed by contributions received from indigenous organizations as part of the consultation process that OHCHR carried out in relation to the study.

[13] A/HRC/6/3.

V. Other relevant activities of the Office of the United Nations High Commissioner for Human Rights

United Nations Declaration on the Rights of Indigenous Peoples

23. The adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples on 13 September 2007 constitutes the culmination of more than two decades of discussion first within the Working Group on Indigenous Populations and later the Commission on Human Rights working group and finally at the first session of the Human Rights Council in June 2006.

24. The United Nations system as a whole, including such advisory bodies as the Permanent Forum on Indigenous Issues, or other monitoring bodies, such as those responsible for the international human rights treaties, are enjoined to promote the implementation of the Declaration, in particular, articles 41 and 42.

25. OHCHR considers that the adoption of the Declaration offers an opportunity to renew efforts to improve the situation of indigenous peoples worldwide, establishing for the first time universal standards that can guide public policy. Together with International Labour Organization (ILO) Convention No. 169 concerning indigenous and tribal peoples in independent countries, the Declaration should also provide a framework for United Nations country teams.

26. On 26 and 27 February 2008, OHCHR and ILO will organize in Geneva a special meeting of the Inter-Agency Support Group on Indigenous Peoples' Issues aimed at integrating the Declaration together with ILO Convention No. 169 into the policies, operational programmes and activities of the United Nations system, including at the country level.

27. An advocacy workshop on the Declaration was conducted in Brazzaville on 17 and 18 November 2007 in cooperation with the Indigenous Peoples of Africa Coordinating Committee, with the participation of indigenous and non-indigenous representatives of non-governmental organizations from the Democratic Republic of the Congo, Rwanda, Burundi, Mali and the Congo, to enhance awareness, knowledge and understanding of the rights of indigenous peoples contained in the Declaration.

Second International Decade of the World's Indigenous People

28. In the Programme of Action for the second International Decade of the World's Indigenous People, it is recommended that cooperation be developed with the Working Group on the Rights of Indigenous Populations/Communities in Africa of the African Commission on Human and Peoples' Rights with a view to increasing the participation of indigenous peoples from Africa in the implementation of the Second Decade Programme of Action and to enhancing the understanding of indigenous issues in Africa.[14] OHCHR organized an expert meeting on indigenous peoples and the implementation of the second Decade of the World's Indigenous People in cooperation with the African Commission on Human and Peoples' Rights and the International Work Group for Indigenous Affairs.

29. The expert meeting brought together the expert members of the African Commission working group on indigenous populations/communities, 35 indigenous

[14] A/60/270, para. 48.

representatives from Kenya, the United Republic of Tanzania, Burundi, Uganda, Ethiopia, the Congo, Morocco, Cameroon, the Democratic Republic of Congo and Mali, the regional representative of the United Nations Centre for Human Rights and Democracy in Central Africa, a representative of the African Union Department for Political Affairs, representatives of the Governments of Burundi, South Africa and the Congo, two expert members of the United Nations Permanent Forum on Indigenous Issues and representatives of the International Labour Office in Geneva and of the United Nations Children's Fund in Brazzaville. Representatives of Minority Rights Group International and the Forest Peoples Project also participated in the meeting.

30. The meeting took place in Brazzaville on 12 and 13 November 2007. The recommendations of the meeting provide a framework for a Plan of Action for Africa to be implemented by the United Nations system and other stakeholders. The recommendations are contained in the annex to the present report.

Climate change and indigenous peoples

31. The Permanent Forum on Indigenous Issues has climate change and indigenous peoples as its principal theme for its seventh session. In that regard, OHCHR draws attention to its ongoing work in that area aimed at advocating greater integration of human rights in climate change discussions. The statement made by the United Nations Deputy High Commissioner for Human Rights at the Conference of the Parties to the United Nations Framework Convention on Climate Change and its Kyoto Protocol, held in Bali, Indonesia, from 3 to 14 December 2007, underlines that indigenous peoples are also among the groups that could be particularly vulnerable to the impacts of climate change and that emerging evidence suggests that the livelihoods and cultural identities of indigenous peoples of North America, Europe, Latin America, Africa, Asia and the Pacific are already being threatened by the impact of climate change. OHCHR, together with other members of the Inter-Agency Support Group, have submitted an inter-agency paper on the matter to the Permanent Forum at its seventh session.[15]

[15] E/C.19/2008/CRP.2.

Annex

Expert meeting on indigenous peoples and the implementation of the second International Decade of the World's Indigenous People

Brazzaville

12-13 November 2007

Recommendations

Objective (i): Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects

Recommendations to the United Nations system

- To continue building the capacities of indigenous peoples' organizations and develop their knowledge and skills to defend their rights through training and consultations
- To ensure consistency of the United Nations system's approach to the promotion of indigenous peoples' rights in the field
- To promote the understanding of the United Nations Declaration on the Rights of Indigenous Peoples among decision makers, public officials, the justice system, national human rights institutions and non-governmental organizations

Recommendations to civil society organizations

- To lobby and advocate policymakers and development partners, including local governments, to integrate indigenous peoples' rights in all development initiatives

Recommendations to Member States

- To recognize the existence of indigenous peoples on their territory and mainstream indigenous peoples' rights in national policies
- To ensure the full and effective participation of indigenous peoples in the process of development of laws, policies and programmes affecting them
- To elaborate and implement, in consultation with indigenous peoples, laws to promote the human rights of indigenous peoples
- To establish consultative mechanisms both at the local and national levels to enable indigenous peoples, through their own representative institutions, to participate in the design, decision-making and implementation of laws, policies and programmes affecting them

Recommendations to the African Commission:

- To review the State party reporting guidelines for all the regional instruments in force and require that States specifically report on the situation of indigenous peoples in their territories

- To develop an additional protocol to the Charter for the protection of indigenous peoples in the continent
- To launch a decade for the promotion and protection of the rights of indigenous peoples in Africa

Recommendations to the national human rights institutions

- To promote the rights of indigenous peoples and monitor the implementation of the United Nations Declaration of the Rights of Indigenous Peoples
- To ensure that the international standards on indigenous peoples' rights are translated into national laws

Objective (ii): Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent

Recommendations to the African Commission

- To promote its jurisprudence concerning indigenous peoples, in particular the right of indigenous peoples to their traditional lands
- To call upon conservation agencies to respect the internationally agreed conservation principles that uphold indigenous peoples' rights to land and control over their resources, in particular the need to ensure the full and effective participation of indigenous peoples
- To recommend conservation agencies to develop partnership with indigenous communities based upon the free, prior and informed consent regarding all conservation initiatives and policy developments on their lands
- To recommend to States and conservation agencies to ensure that indigenous peoples who have been displaced by protected areas regain access to their traditional lands and uphold their rights
- To develop partnership with States and civil society to ensure that indigenous peoples are provided with training on the concept of free, prior and informed consent

Recommendations to Member States

- To respect the right to self-determination of indigenous peoples as guaranteed in the African Charter
- To involve indigenous peoples in the decision-making processes concerning the "use" of their culture when engaging with tourism activities
- To adapt their decision-making processes to the culture of indigenous peoples
- To recognize customary rights of indigenous peoples as well as their collective rights to their traditional lands
- To ensure that development projects take into consideration the specific needs of indigenous peoples

- To ensure that international and regional financial authorities respect their directives on indigenous peoples when financing development projects
- To ensure that forest authorities respect indigenous peoples' customary land rights and systematically consult them on projects to be implemented on their ancestral lands
- To map out the forest reserves and review the impact on the lifestyle and livelihood of indigenous peoples

Recommendations to the United Nations system

- To provide training workshops to States, including decentralized authorities, but also civil society actors, on the concept of free, prior and informed consent
- To undertake a comprehensive study on the activities of extractive industries carried out on the traditional lands of indigenous peoples and to study the impact on the human rights of indigenous peoples

Objective (iii): Redefining development policies that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples

Recommendations to Member States

- To recognize the existence, identity, languages and rights of indigenous peoples in their Constitutions
- To ensure that the education curricula are compatible and respectful of the cultural identity of indigenous peoples
- Ensure participation of indigenous peoples in the development, implementation and follow-up of activities related to education
- Consult and facilitate the participation of indigenous peoples in the formulation of policies, in particular concerning indigenous languages within primary compulsory school
- To adopt positive measures in view of the historical marginalization of indigenous peoples in designing and implementing nation State policies
- To mainstream cultural diversity in national and local government
- To adopt a national day to celebrate the cultural diversity of all peoples

Recommendations to the United Nations system and the African Union

- To assist States parties with technical cooperation to implement all the foregoing recommendations

Objective (iv): Adopting targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, with particular emphasis on indigenous women, children and youth

Recommendations to Member States

- To revise and adapt poverty reduction strategy papers of relevant countries to the situation and specific needs of indigenous peoples, with special attention to indigenous women, children and youth

- To define specific policies regarding education which are culturally adapted to indigenous children and youth
- To elaborate development projects for indigenous populations taking into account their own priorities in consultation with them
- To include women, children and disabled indigenous persons in the development of projects, taking into account their culture
- To define specific policies for indigenous peoples within each ministry, in consultation with them, and allocate appropriate funds for projects related to indigenous peoples

Recommendations to the United Nations system

- To multiply the number of programmes aimed at the strengthening of indigenous peoples' capacities, in particular women and youth
- To strengthen capacities of organizations of indigenous populations for the development of programmes and projects

Objective (v): Developing strong monitoring mechanisms and enhancing accountability at the international, regional and, in particular, the national level, regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives

Recommendations to Member States

- To create national inter-ministerial commissions to follow up on national programmes and policies concerning indigenous peoples' rights
- To elaborate specific national policies in order to effectively improve the living conditions of indigenous peoples
- To produce regular reports on the implementation of these programmes and policies according to a pre-established agenda

Recommendations to the African Commission

- To sensitize the member States to the importance of the ratification of International Labour Organization Convention No. 169 and create regional commissions to follow up
- To strengthen the Working Group on indigenous populations/communities, in particular regarding its research, information and communications mechanisms

Recommendations to the United Nations system

- To integrate indigenous peoples in the regional offices of the Office of the United Nations High Commissioner for Human Rights
- To provide financial support to activities aiming at the improvement of the human rights situation of indigenous peoples
- To establish mechanisms to follow up on national and regional programmes

Recommendations to the Permanent Forum

- **To reinforce the participation of indigenous peoples during the sessions of the Permanent Forum**
- **To establish follow-up mechanisms to indigenous peoples' recommendations**

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Implementation of the recommendations on the six mandated areas of the Permanent Forum and on the Millennium Development Goals

Information received from the United Nations system and other intergovernmental organizations

Report of the United Nations system in Ecuador**

Summary

This report refers to the common country assessment and United Nations Development Assistance Framework, together with the contributions made by various United Nations agencies in Ecuador in compliance with the recommendations made at the sixth session of the Permanent Forum on Indigenous Issues and of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples in the framework of the Second International Decade of the World's Indigenous People and of the United Nations Declaration on the Rights of Indigenous Peoples. This is the third joint report submitted to the Permanent Forum by United Nations agencies; it was prepared by the inter-agency intercultural theme group chaired by the United Nations Population Fund in Ecuador.

* E/C.19/2008/1.

** This report was submitted late in order to ensure the inclusion of the most recent information.

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I. Cooperation framework

1. In the context of United Nations reform, Ecuador is moving towards harmonizing views, strategies and actions and streamlining procedures. The common country assessment of the United Nations system in Ecuador in 2002 highlighted the need to work to reduce inequalities and exclusion in the economic, social, ethnic and gender spheres. The United Nations Development Assistance Framework (UNDAF) incorporates in its strategies and actions an intercultural and gender perspective aimed at reducing these inequalities. Through a process of consultation with civil society organizations in November and December 2007, these approaches have been incorporated into the next UNDAF programme (2009-2013). Since 2007, the country has also had a National Development Plan for the period 2007-2010 which can serve to a considerable extent as a basis for cooperation with the United Nations system.

2. The inter-agency, intercultural theme group established by the United Nations country team is making efforts to incorporate an intercultural approach into UNDAF programming. The theme group is composed of United Nations focal points, who are participating in an effort to harmonize views, knowledge and experiences in their work with indigenous and Afro-Ecuadorian peoples and to implement an annual work programme agreed by the agencies. The following agencies are part of the theme group: the United Nations Population Fund (UNFPA), the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Pan-American Health Organization (PAHO), the World Food Programme (WFP), the United Nations Development Fund for Women (UNIFEM), the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Food and Agriculture Organization of the United Nations (FAO), the World Bank and the World Tourism Organization (UNWTO).

II. Coordination of United Nations agencies in Ecuador

3. The practice of inter-agency coordination at the country level is in keeping with the United Nations reform and with the Permanent Forum's mandate to raise awareness and promote the integration and coordination of all activities related to indigenous issues within the United Nations system.

III. Cooperation among United Nations agencies in Ecuador

4. Inter-agency activities are aimed at the three areas of cooperation defined by UNDAF: poverty reduction through access to basic social services; environmental sustainability; and democratic governance and transparency. In these three areas, United Nations agencies are involved in various projects, some of which are being jointly implemented with the indigenous peoples and nations of Ecuador. The working strategies include: (a) focusing agency efforts on indigenous and Afro-Ecuadorian peoples; (b) raising awareness of gaps based on ethnicity, race and gender; (c) empowering indigenous and Afro-Ecuadorian peoples as partners in

development strategies; and (d) creating internal mechanisms to ensure the incorporation of an intercultural perspective.

IV. Preparatory activities for the Permanent Forum

5. As part of the preparatory activities for the sixth session of the Permanent Forum, UNFPA, as the lead agency of the inter-agency intercultural theme group, with the participation of United Nations organizations, organized the preparatory workshop for male and female national leaders to review the issues considered by the Forum and to prepare proposals. The preparatory workshop was attended by 60 delegates representing national indigenous organizations, central government institutions, non-governmental organizations and women's organizations. The workshop was also attended by indigenous officials from the Council for the Development of the Nationalities and Peoples of Ecuador (CODENPE), a representative of the Forum, Dr. Nina Pacari, and the United Nations Resident Coordinator in Ecuador. A core document was prepared at the workshop to serve as a guide for the national participants attending the Forum.

V. Contributions to the Millennium Development Goals

6. The inter-agency intercultural theme group supported the preparation of Ecuador's report on the Millennium Development Goals from the perspective of the indigenous peoples and Afro-Ecuadorian Peoples. The report, which focuses on the inequality gaps that persist between the indigenous and non-indigenous populations, was mainly prepared by UNDP and UNFPA as an inter-agency activity. The report includes recommendations for policies and strategies to enhance progress towards reaching the Millennium Development Goals and to close the inequality gaps. It is now at the publication stage.

VI. Poverty reduction through access to basic social services

A. Bilingual intercultural education

7. Through the indigenous component of the Human Rights Strengthening (HURIST) programme, jointly executed by UNDP and OHCHR and supported by the Catalan Agency for Development Cooperation, human rights and the rights of indigenous peoples were incorporated into the curriculum of the National Directorate for Bilingual Intercultural Education (DINEIB).

B. Disaggregated statistics

8. In accordance with the recommendations made by the Permanent Forum, UNFPA supported the process of strengthening and institutionalizing the analysis and use of statistical information on indigenous peoples. As a result of this ongoing work of dialogue and consensus with the various actors participating in data production and dissemination, the National Commission on Statistics for Indigenous and Afro-Ecuadorian Peoples was established, under the coordination of the

National Statistics and Census Institute, CODENPE and the Afro-Ecuadorian Peoples Development Council.

9. The basic objective of the Commission is to harmonize and reach consensus regarding quantitative and qualitative information on the indigenous and Afro-Ecuadorian peoples of Ecuador, and to standardize methodologies for calculating indicators used in studying the living conditions of these important population groups. The intention is to improve the system for production, use and dissemination of statistics disaggregated by ethnic status to ensure the visibility of indigenous and Afro-Ecuadorian peoples in the data and to facilitate the implementation of specific public policies for those peoples.

10. The Commission held a first internal training workshop with the active participation of a large number of actors and with technical support from the Latin American and Caribbean Demographic Centre (CELADE) — Population Division of the Economic Commission for Latin America and the Caribbean (ECLAC). At the workshop, the current situation of statistics on the indigenous peoples in Ecuador was reviewed and strategy guidelines for future action were defined.

C. Gender

11. In cooperation with UNFPA, UNIFEM, the Facultad Latinoamericana de Ciencias Sociales, Family Care International, and the Association of Quechua Women of Sucumbíos (AMNKISE), a seminar was held on health, violence and proper treatment, with analysis of lessons learned and practices for tackling violence against indigenous women.

12. From 6 to 8 June 2007 a preparatory meeting took place in Quito for the Fifth Continental Summit of Indigenous Women of the Americas, which was held in Toronto, Canada, at the beginning of July. In Quito, 30 indigenous women from seven South American countries discussed how to strengthen their participation in a number of international decision-making forums, including the Andean Community and the Organization of American States. They also discussed the opportunities offered by international cooperation and the Convention on Biological Diversity. The preparatory meeting in Quito was sponsored by UNIFEM.

13. With the support of UNFPA and UNIFEM, on 7 June 2007, the National Council for Women (CONAMU) together with national women's organizations organized a "pre-constituent" session in order to consider the women's proposals to the Assembly. It was attended by women leaders from throughout the country. Over 500 indigenous women came to present their proposals, which were submitted to the Director of CONAMU and the representative of UNFPA.

14. As the health indicators of indigenous women showed gaps in relation to those of non-indigenous women, especially for maternal health, UNFPA Ecuador made efforts to learn more about the views of indigenous women on the reproductive health services in two indigenous Quechua areas of the country: Otavalo and Chimborazo. These analyses have led to a greater awareness of the cultural barriers that impede indigenous women's access to reproductive health services and have provided a basis for designing strategies to improve services.

15. In Chimborazo, the Social Research Centre provided support for the second phase of the Dolores Caguango School of Indigenous Women Leaders with

emphasis on training in sexual and reproductive rights, promotion of the Free Maternity and Child Care Act and the establishment of a social monitoring process. Efforts are being made with health personnel for cultural adaptation of health services and a survey of the attitudes and needs of the indigenous populations has been carried out.

16. In the province of Bolívar the issues of sexual and reproductive health have been incorporated into the training of indigenous advocates and the teaching materials, including a self-help manual, have been adapted to include the Andean world view in the health-care processes. In Sucumbíos, in association with AMNKISE, Free Maternity and Child Care Act beneficiaries' committees have been established with the participation of indigenous representatives; communities have been provided with training on sexual and reproductive rights in their own language; and health advocates are working on issues of gender, violence prevention, recognition of signs indicating obstetric emergency and community transport for obstetric emergency patients. Support has been provided for the organization and training of young indigenous women from AMNKISE on health and reproductive rights and leadership issues. In the province of Orellana, community advocates and teaching facilitators have received training for making visits to indigenous communities and colonies to provide information and access to sexual and reproductive rights services.

17. In the context of the HURIST programme, a national workshop was held on 20 September on the gender perspective with indigenous peoples. It was attended by thirty-five participants, who made a series of recommendations.

D. Inter-agency programme

18. The theme group produced a concept note entitled "Development and Cultural Diversity to reduce Poverty and promote Social Inclusion" as a proposal for the UNDP-Spain Millennium Development Goals Achievement Fund. This proposal gives priority to action with indigenous and Afro-Ecuadorian peoples. The concept note was approved and the next step was preparation of the project document in order to implement a three-year innovative programme of collaboration with civil society organizations in the context of implementation of the intercultural perspective in sustainable human development. The programme will be implemented in three regions, Esmeraldas, Chimborazo and Sucumbíos, and the national partners are the Ministry of Coordination for Cultural and Natural Heritage, and the National Secretariat for Planning and Development.

VII. Environmental sustainability

19. The UNDP Small Grants Programme has supported local and national sustainable projects that are directly managed by indigenous organizations or non-governmental organizations working with indigenous groups.

A. Community tourism

20. An international seminar on community tourism in Ecuador, from local management to national public policies, was held on 26 and 27 July 2007. Its organizing committee consisted of UNESCO, UNWTO, the Netherlands Development Organization, The Nature Conservancy, United States Agency for International Development, Global Sustainable Tourism Alliance, the Ministry of Coordination for Cultural and Natural Heritage, the Ministry of Tourism of Ecuador, the Plurinational Federation of Community Tourism of Ecuador and CODENPE. The main objective of the seminar was to contribute to the national debate on the importance of community tourism and its inclusion in national State policies in order to strengthen its impact on poverty reduction and preservation of cultural and natural heritage.

21. International representatives from Argentina, Bolivia, Colombia and Peru, together with the national authorities and other participants, demonstrated the diversity of views that exist on community tourism. One result of the participants' joint efforts was the establishment of a Latin American network to support community tourism, with a view to promoting the inclusion of community tourism on national government agendas. In addition, in the case of Ecuador, there was recognition that the Development of Sustainable Tourism Strategic Plan 2006-2020 should include the inputs requested by the community sector.

B. Indigenous peoples in isolation

22. With regard to the rights of indigenous peoples in isolation, a programme presented by a number of agencies of the United Nations system in Ecuador to the UNDP-Spain Millennium Development Goals Achievement Fund, entitled "Conservation and Sustainable Management of the Natural and Cultural Heritage of the Yasuní Biosphere Reserve" includes the following expected output: "National policies and strategies for protection of peoples in voluntary isolation have been incorporated into regional plans and programmes." Implementation of this programme will begin in 2008.

C. Return to traditional products

23. FAO has been supporting the indigenous peoples of Chimborazo in the sustainable use of agricultural resources by offering incentives to produce, grow and process native species and varieties in order to make use of traditional knowledge in the production sector by applying cultivation and processing techniques that are based on respect for the intellectual property rights of the indigenous peoples and local communities.

VIII. Democratic governance and transparency

24. In 2007 the second phase of the indigenous component of the global HURIST programme (see paragraph 7) was completed. It was implemented in Ecuador by the National Directorate for the Defence of Indigenous Peoples and the National Directorate for Bilingual Intercultural Education. In this final year, efforts were

concentrated on disseminating information on individual and collective human rights to the different indigenous peoples and nationalities of the country through workshops and the publication of manuals and studies.

25. At the request of the national Government, UNESCO has begun to provide the necessary technical cooperation to consolidate integrated cultural policies in the country through the recently created Ministry of Culture in response to the historical demands of creators, artists and citizens to resolve the problems of dispersion of resources, the disorganized supply of cultural goods and services, the lack of a long-term integrated policy based on an attitude of respect for the diversity and multiculturalism of the Ecuadorian population and also the poor level of coordination between institutions and agencies responsible for designing and implementing cultural policies.

A. Consultative mechanism with the United Nations system

26. With the support of the HURIST programme, the intercultural theme group is continuing to work on establishing a mechanism for participation such as an advisory council and adviser on indigenous peoples and the United Nations system in Ecuador, with a view to considering the human rights of indigenous peoples and incorporating the indigenous world view into relevant programmes and strategies.

B. Children and youth

27. In May 2007, a minimum agenda for the rights of indigenous children and youth was presented by a group of young Ecuadorian delegates at the plenary session of the Permanent Forum on Indigenous Issues. The agenda for indigenous children includes the ideas, dreams and contributions of over four thousand children from the system of bilingual intercultural education. These initiatives are supported by UNICEF.

C. Report of the Special Rapporteur

28. The Andean project for the promotion of the rights of indigenous peoples and people of African descent in Bolivia, Ecuador and Peru (sponsored by OHCHR) facilitated publication of the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, who visited Ecuador from 24 April to 4 May 2006.

IX. Obstacles to the implementation of the recommendations of the Permanent Forum

29. We have not found any significant obstacles and have rather tried to make use of the opportunities for work with national agencies in a context of significant political change in the country.

X. Factors facilitating the implementation of the recommendations of the Permanent Forum

30. The inter-agency theme group supports joint efforts and has contributed to achieving a greater awareness and coordination of the work among agencies as well as a higher public profile of the system on intercultural issues, in close contact with indigenous leaders which has facilitated the implementation of a number of national initiatives.

XI. Other relevant information

A. International Day of the World's Indigenous People

31. The United Nations system in Ecuador, through the intercultural theme group, the European Union and the Spanish International Cooperation Agency, jointly organized a commemoration event which brought together representatives of indigenous organizations, government and international cooperation agencies in the Mindalae ethnographic museum.

B. United Nations Declaration on the Rights of Indigenous Peoples

32. Taking advantage of the recent approval by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples, on 5 and 6 November UNICEF convened an expanded meeting of its regional Advisory Group of Indigenous Leaders in Quito.

XII. Conclusions

33. The work of the United Nations in Ecuador with indigenous peoples in 2007 made progress in finalizing the report on the Millennium Development Goals from the perspective of the indigenous peoples; in continuing to confer with the indigenous peoples in the ongoing process of setting up an advisory council composed of representatives of national bodies; in publishing the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples; in publishing the third information bulletin of the intercultural theme group; and in raising public awareness of existing inequality gaps through a number of initiatives, including the strengthening of statistical information systems in the crucial area of disaggregated data. The work of the United Nations on indigenous peoples has contributed to the joint programming of the Organization by ensuring an intercultural approach in the future UNDAF programme (2009-2013).

34. The challenges for 2008 include following up on the Special Rapporteur's recommendations, disseminating the report on the Millennium Development Goals among the indigenous peoples, the creation of a mechanism for consultation with the indigenous peoples and promoting the incorporation of an intercultural perspective into public policy. Many of these challenges are included in the future inter-agency programme "Development and Cultural Diversity to Reduce Poverty and Promote Social Inclusion", to be implemented over the next three years and

which appears to be an innovative challenge in coordination between the various agencies of the United Nations, the State and civil society organizations to work with an intercultural perspective in the context of sustainable human development.